

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

<p>CONSERVATION LAW FOUNDATION, INC.</p> <p>Plaintiff,</p> <p>v.</p> <p>SIMS GROUP USA CORPORATION, SIMS GROUP USA HOLDINGS CORPORATION, SMM EAST CORPORATION,</p> <p>Defendants</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No.</p> <p>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL PENALTIES</p>
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INTRODUCTION

1. Stormwater runoff from industrial facilities, including scrap metal yards, is a major source of toxic pollutants in urban areas. At these sites, rainwater flows over piles of scrap metal, carrying heavy metal pollution into rivers, streams, and groundwater, and operations at the facilities disperse metal dust that pollutes the air and waterways.

2. To protect public health and the environment, EPA and state environmental agencies issue general permits requiring industrial facilities to implement stormwater pollution controls and keep heavy metal pollution out of discharges. Facilities that do not comply with their industrial stormwater permits expose communities to toxic runoff.

3. This action is a citizen suit brought under Section 505 of the Federal Water Pollution Control Act (“Clean Water Act” or “CWA,”), 33 U.S.C. § 1365(a), to address Clean Water Act violations involving industrial stormwater runoff at a scrap metal facility in Long Island City, New York 11101 (the “Facility”).

4. The Facility is owned and operated by the SMM East Corporation, Sims Group USA Corporation, Sims Group USA Holdings Corporation, their agents, and directors (collectively, “Sims” or “Defendants”).
5. Sims is discharging pollutants including aluminum, cadmium, chemical oxygen demand (COD), chromium, copper, iron, lead, oil and grease, total suspended solids (TSS), and zinc from the Facility into receiving water Newtown Creek.
6. Sims’ discharges from Facility are and have been subject to the New York Multi-Sector General Permits for Stormwater Discharges Associated with Industrial Activity (the “2023 MSGP” and the “2018 MSGP,” collectively, the “MSGPs”).
7. Sims has discharged and continues to discharge stormwater associated with its industrial activities into waters of the United States in violation of the MSGPs by: (1) failing to take required corrective actions; (2) failing to follow required procedures for minimizing pollutant discharges; (3) contributing to the receiving waters’ failure to meet water quality standards and their impairments; (4) failing to comply with monitoring and reporting requirements; and (5) discharging solids (including plastic waste, scrap metal, and trash) directly into the receiving water without authorization.
8. Conservation Law Foundation (“CLF”) seeks declaratory judgment, injunctive relief, and other relief with respect to Sims’ violations of the MSGPs, Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and applicable regulations.

JURISDICTION AND VENUE

9. Plaintiff brings this civil suit under the citizen suit provision of Section 505 of the Clean Water Act, 33 U.S.C. § 1365.
10. This Court has subject matter jurisdiction over the parties and this action pursuant to

Section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1); 28 U.S.C. § 1331 (an action arising under the Constitution and laws of the United States); and 28 U.S.C. §§ 2201 and 2202 (declaratory judgment).

11. On October 10, 2024, Plaintiff notified Sims and its agents of its intention to file suit for violations of the Clean Water Act, in compliance with the statutory notice requirements of Section 505(b)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A), and the corresponding regulations located at 40 C.F.R. § 135.2.

12. A true and accurate copy of Plaintiff's Notice Letter ("Notice Letter") is appended as Exhibit 1. The Notice Letter is incorporated by reference herein.

13. SMM East Corporation, Sims Group USA Corporation, Sims Group USA Holdings Corporation, and their registered agent each received the Notice Letter.

14. Plaintiff also sent copies of the Notice Letter to the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of EPA Region 2, the Department of Justice Citizen Suit Coordinator, and the Commissioner of the New York State Department of Environmental Conservation ("NYSDEC").

15. Each of the addressees identified in the preceding paragraph received the Notice Letter.

16. A copy of each return receipt is attached as Exhibit 2.

17. More than sixty days have elapsed since Plaintiff mailed its Notice Letter.

18. NYSDEC sent Sims a Notice of Violation on November 22, 2024 listing the following violations: (1) benchmark exceedances which confirm that the Facility has failed to implement adequate corrective actions to achieve satisfactory results; (2) benchmark exceedances for pollutants of concern (COD and oil and grease) to Newtown Creek, which is impaired for dissolved oxygen and garbage refuse; (3) failure to maintain exposed areas in a manner that

would prevent or minimize pollutants from entering stormwater discharges, including inadequate housekeeping; (4) inadequate stormwater quality controls to prevent the discharge of pollutants into Newtown Creek; and (5) failure to fully describe on-site industrial activities when submitting the electronic notice of intent for coverage under the MSGPs.

19. During the sixty-day notice period, neither EPA nor the State of New York have filed an action to redress the violations alleged in this Complaint. 33 U.S.C. § 1365(b)(1)(B).

20. The Clean Water Act violations alleged in the Notice Letter are of a continuing nature, ongoing, or reasonably likely to re-occur.

21. Venue is proper in the United States District Court for the Southern District of New York pursuant to Section 505(c)(1) of the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the sources of the violations are located within this judicial district.

PARTIES

Plaintiff

22. Plaintiff, Conservation Law Foundation (“CLF”), is a nonprofit, member-supported, regional environmental advocacy organization.

23. CLF has 5,806 members in New England and other states, including New York.

24. CLF’s members use and enjoy the waters of New York, including Newtown Creek, for recreational and aesthetic purposes, including but not limited to boating and observing wildlife.

25. CLF’s members include individuals who live and spend time near Newtown Creek.

Defendants

26. Defendants have operated and continue to operate a scrap metal facility located at 30-27 Greenpoint Avenue in Long Island City, New York 11101.

27. Defendants are responsible for ensuring that the Facility operates in compliance with the Clean Water Act.

28. Defendants are all persons as defined by Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5).
29. Defendant Sims Group USA Corporation is incorporated under the laws of Delaware.
30. Sims Group USA Corporation participates in and exercises control over the operations and activities of SMM East Corporation.
31. Employees of Sims Group USA Corporation actively participate in and/or exercise control over the operation of the Facility.
32. Sims Group USA Corporation exercises control over the environmental compliance of the Facility, including their compliance with the Clean Water Act.
33. Sims Group USA Corporation is liable for the Clean Water Act violations occurring at the Facility.
34. Defendant Sims Group USA Holdings Corporation is incorporated under the laws of Delaware.
35. Sims Group USA Holdings Corporation participates in and exercises control over the operations and activities of SMM East Corporation.
36. Employees of Sims Group USA Holdings Corporation actively participate in and/or exercise control over the operation of the Facility.
37. Sims Group USA Holdings Corporation exercises control over the environmental compliance of the Facility, including its compliance with the Clean Water Act.
38. Sims Group USA Holdings Corporation is liable for the Clean Water Act violations occurring at the Facility.
39. Defendant SMM East Corporation is incorporated under the laws of Delaware.
40. SMM East Corporation is a wholly owned subsidiary of Sims Group USA Corporation

and Sims Group USA Holdings Corporation.

41. Defendants are subsidiaries of Sims Limited, a publicly traded company headquartered in Australia.

42. Sims Group USA Corporation, Sims Group USA Holdings Corporation, and SMM East Corporation own and/or operate the Facility and have owned and/or operated it since at least 2019.

STATUTORY AND REGULATORY BACKGROUND

The Clean Water Act

43. The objective of the Clean Water Act is “to restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

44. The Clean Water Act prohibits the addition of any pollutant to navigable waters from any point source except as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit applicable to that point source. 33 U.S.C. §§ 1311(a) and 1342.

45. Under the Clean Water Act’s implementing regulations, the “discharge of a pollutant” is defined as “[a]ny addition of any ‘pollutant’ or combination of pollutants to ‘waters of the United States’ from any ‘point source.’” 40 C.F.R. § 122.2; *see also* 33 U.S.C. § 1362(12).

46. A “pollutant” is any “solid waste,” “chemical wastes, biological materials,” “wrecked or discarded equipment, rock, sand,” and “industrial . . . waste” discharged into water. 33 U.S.C. § 1362(6).

47. The Clean Water Act defines navigable waters as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

48. “Waters of the United States” are defined by EPA regulations to include, *inter alia*, all tributaries to interstate waters. *See* 40 C.F.R. § 122.2.

49. “Point source” is defined broadly to include, “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

50. Section 402 of the CWA requires that NPDES permits be issued for stormwater discharges associated with industrial activities. 33 U.S.C. §§ 1342(a)(1), 1342(p)(2), 1342(p)(3)(A), 1342(p)(4), 1342(p)(6).

51. The Clean Water Act authorizes citizen enforcement actions against any “person” who is alleged to be in violation of an “effluent standard or limitation . . . or an order issued by the Administrator or a State with respect to such a standard or limitation.” 33 U.S.C. § 1365(a)(1).

52. An “effluent limitation” is “any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.” *See id.* 1362(11).

53. Such enforcement action under Section 505(a)(1) of the Clean Water Act includes an action seeking remedies for unauthorized discharges under Section 301 of the Clean Water Act, 33 U.S.C. § 1311, as well as for violations of a permit condition under Section 505(f), 33 U.S.C. § 1365(f).

54. Each separate violation of the Clean Water Act subjects the violator to a penalty of up to the maximum amount allowed pursuant to Sections 309(d) and 505(a) of the Clean Water Act, 33 U.S.C. §§ 1319(d), 1365(a). *See also* 40 C.F.R. §§ 19.1–19.4.

The Multisector General Permit

55. The MSGPs regulate stormwater discharges from industrial facilities and are issued by NYSDEC pursuant to Sections 402(a) and 402(p) of the CWA. 33 U.S.C. §§ 1342(a), 1342(p).

56. The 2018 MSGP took effect on March 1, 2018,¹ and the 2023 MSGP took effect on March 8, 2023.²

57. The MSGPs require that Sims, and all of its contractors or subcontractors, “must comply with all terms and conditions of [the MSGP].” 2018 MSGP at 197; 2023 MSGP at 185.

58. The MSGPs only authorize stormwater discharges and certain enumerated non-stormwater discharges. 2018 MSGP at 1-3; 2023 MSGP at 1-3; *see also* 6 NYCRR 750-1.2(a)(29)(vi).

59. Non-stormwater discharges of solids, including recycled plastics and pieces of scrap metal, directly into the receiving water are not authorized by the MSGPs. *Id.*

New York’s Surface Water Quality Regulations

60. The MSGPs require that Sims not “cause or contribute to a violation of water quality standards as contained in 6 NYCRR Parts 700-705.” 2018 MSGP at 14; 2023 MSGP at 13.

61. New York state surface water quality standards address deposits, floating matter, odor, color, taste, turbidity, and undesirable or nuisance species of aquatic life. 6 CRR-NY § 703.2.

62. New York state surface water quality standards require that all surface waters are free of suspended, colloidal, settleable solids, oil and floating substances that result in residue, a visible oil film, or globules of grease; and no garbage, oils, sludge, or other refuse pollutants that impair designated uses. *Id.*

63. New York state surface water quality standards require that Class SD waters shall be free

¹ NY DEC, *SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activities* (effective Mar. 1, 2018), [https://assets.vbt.io/public/files/6975/NY_Resources_Multi-Sector/NY - DEC - SPDES Multi Sector General Permit for Stormwater Discharges Associated with Industrial Activity_GP-0-17-004.pdf](https://assets.vbt.io/public/files/6975/NY_Resources_Multi-Sector/NY_-_DEC_-_SPDES_Multi_Sector_General_Permit_for_Stormwater_Discharges_Associated_with_Industrial_Activity_GP-0-17-004.pdf) [hereinafter “2018 NY MSGP”].

² NY DEC, *SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity* (effective Mar. 8, 2023), https://extapps.dec.ny.gov/docs/water_pdf/gp023001final03082023.pdf [hereinafter “2023 NY MSGP”].

from color and turbidity in concentrations or combinations that are aesthetically objectionable or would impair any use assigned to this Class. *Id.*

64. New York’s state surface water quality standards require that waters shall contain no taste and odor “that would impair the waters for their best usages.” 6 CRR-NY § 702.14.

FACTUAL BACKGROUND

The Waterbodies Affected by the Facility’s Discharges

65. The Facility discharges into Newtown Creek (State Waterbody ID NY1702-0002).

66. Newtown Creek is a tributary of the East River and flows through the boroughs of Queens and Brooklyn.

67. Newtown Creek was listed as impaired on the U.S. EPA 2020 list for all its designated uses, including impairment to fish and wildlife habitat from dissolved oxygen, fecal coliform, floating debris, and trash.

68. Newtown Creek is a Class SD waterbody.

69. NYSDEC’s classification of Newtown Creek as a Class SD waterbody indicates that the best use of Newtown Creek is fishing and that its waters should be suitable for fish survival.

70. Newtown Creek’s designated uses include habitat for fish, other aquatic life, and wildlife, and primary and secondary contact recreation.

71. Newtown Creek and the East River are navigable waters within the meaning of the Clean Water Act.

The Multi-Sector General Permits

72. Sims has discharged and continues to discharge stormwater associated with industrial activities from the Facility into waters of the United States.

73. Sims’ activities at the Facility include the receiving, processing, and distribution of non-source separated, non-liquid recyclable wastes, including ferrous and nonferrous metals. *Id.*

74. Sims' activities at the Facility include activities which are classified by the MSGP as Sector N: Scrap Recycling & Waste Recycling Facility. 2018 MSGP at 114; 2023 MSGP at 106.

Sims' Stormwater Pollution Prevention Plan

75. The MSGPs require Sims to develop and maintain a Stormwater Pollution Prevention Plan ("SWPPP") for the Facility pursuant to specific requirements. 2018 MSGP at 17-28; 2023 NY MSGP at 16-27.

76. The MSGPs require Sims to include in its SWPPP the following information related to discharges to impaired waterbodies where the cause of the impairment is a pollutant of concern included in Sims' benchmarks: (1) identification of the impaired waterbody, (2) pollutants of concern, (3) potential for presence of pollutants of concern in stormwater, and (4) stormwater controls for the pollutants of concern. 2023 MSGP at 26; 2023 MSGP App. F; 2018 MSGP at 27; 2019 MSGP App. G.

77. The MSGPs require Sims to amend the Facility's SWPPP according to the requirements in the MSGPs. 2018 NY MSGP at 27-28; 2023 NY MSGP at 26-27.

Sims' Benchmarks Under the MSGPs

78. The MSGPs require Sims to "conduct stormwater outfall monitoring." 2018 MSGP at 34-37; 2023 MSGP at 33-36.

79. The MSGPs require Sims to conduct quarterly benchmark monitoring of its discharges for aluminum, cadmium, chemical oxygen demand, chromium, copper, iron, lead, oil and grease, total suspended solids, and zinc. 2018 MSGP at 34, 36, 124; 2023 MSGP at 33, 35, 115.

80. Sims is subject to the MSGPs' sector-specific benchmarks for Sector N (Scrap Metal Recycling Facilities). 2018 MSGP at 114-124; 2023 MSGP at 106-115.

81. The benchmark values in the MSGPs for Sector N are 750 µg/L for aluminum, 1.8 µg/L for cadmium, 120 mg/L for COD, 1.8 mg/L for chromium, 12 µg/L for copper, 1.0 mg/L for

iron, 69 µg/L for lead, 15 mg/L for oil and grease, 100 mg/L for TSS, and 110 µg/L for zinc.

2018 NY MSGP at 124; 2023 NY MSGP at 115.

Sims' Required Corrective Actions Under the MSGPs

82. The MSGPs require Sims to take corrective actions following triggering events, including “when the quarterly visual monitoring indicates the presence of pollution or when the benchmark or numeric effluent limitation monitoring sample results indicate exceedances of the pollutants.”

2018 MSGP at 41-42; 2023 MSGP at 40-41.

83. The MSGPs require that following a triggering event, Sims must 1) conduct a facility inspection 2) implement BMPs to address any identified sources of contamination within set timeframes, and 3) revise the Facility’s SWPPP. 2018 MSGP at 41-42; 2023 MSGP at 40-41.

84. The MSGPs require that if the BMP implementation will take longer than 12 weeks, Sims must submit the proposed schedule to NYSDEC and obtain written approval. 2018 MSGP at 41; 2023 MSGP at 40.

Sims' Pollutant Control Requirements Under the MSGPs

85. The MSGPs require Sims to “reduce and/or eliminate [the discharge of pollutants] to the extent achievable using control measures... that are technologically available and economically practicable and achievable in light of best industry practice.” 2018 MSGP at 8, 178; 2023 MSGP at 7, 168.

86. The MSGPs require Sims to establish procedures to minimize the potential of any residual fluids from coming into contact with precipitation or runoff. 2018 MSGP at 15-16; 2023 MSGP at 14-15.

87. The MSGPs require Sims to maintain a clean, orderly facility (e.g. sweeping at regular intervals, appropriate storage practices, proper garbage and waste management, dust control measures, etc.) in all areas that are exposed to rainfall and are potential sources of pollutants.

2018 MSGP at 9; 2023 MSGP at 8.

88. The MSGPs require Sims to routinely inspect and maintain “materials or activities [that] are exposed to stormwater.” 2018 MSGP at 29-31; 2023 MSGP at 28-30.

89. The MSGPs require Sims to implement control measures, including keeping spill response supplies available and appropriately training personnel. 2018 MSGP at 10; 2023 MSGP at 9.

90. The MSGPs require that Sims regularly inspect equipment for spills or leaks and establish a preventive maintenance program for processing equipment. 2018 MSGP at 21; 2023 MSGP at 20-21.

91. The MSGPs require Sims to minimize the potential for leaks and spills by identifying procedures for containing, reporting and cleaning up spills. 2018 MSGP at 10; 2023 MSGP at 18.

92. The MSGPs require Sims to identify areas that have a potential for soil erosion due to topography, activities, or other factors, and shall implement measures to limit erosion and stabilize such areas. 2018 MSGP at 19-20; 2023 MSGP at 22.

93. The MSGPs require Sims to divert stormwater run-on away from potential pollutant sources by means of interceptor or diversion controls. 2018 MSGP at 11; 2023 MSGP at 10.

94. The MSGPs require Sims to “minimize [the] generation of dust.” 2018 MSGP at 13; 2023 MSGP at 12.

95. The MSGPs require Sims to conduct “routine facility inspections.” 2018 MSGP at 13; 2023 MSGP at 10.

96. The MSGPs require that inspections include visual monitoring and evaluations of control measures quarterly. 2018 MSGP at 33-34; 2023 MSGP at 32-33.

97. The MSGPs require that inspections identify “residue or trash on the ground that could contaminate or be washed away in stormwater.” 2018 MSGP at 29; 2023 MSGP at 28.

Sims’ Sector-Specific Pollutant Control Requirements Under the MSGPs

98. The MSGPs require Sims to minimize the chance of accepting materials that could be significant sources of pollutants by conducting inspections of inbound recyclables and waste materials and through an “inbound waste control program.” 2018 MSGP at 118; 2023 MSGP at 108.

99. The MSGPs require Sims to minimize stormwater and/or stormwater runoff contact with stockpiled materials, processed materials, and non-recyclable wastes by implementing Structural Best Management Practices in the site’s SWPPP. 2018 MSGP at 121; 2023 MSGP at 108.

100. The MSGPs require Sims to minimize the contact of stormwater and/or surface runoff with scrap processing equipment and minimize the contact of accumulated particulate matter and residual fluids with stormwater and/or runoff. *Id.*

101. The MSGPs require Sims to implement control measures to “minimize or eliminate (if possible) exposure of scrap lead-acid batteries to precipitation or runoff.” *Id.*

Sims State Water Quality Standards Requirements

102. The MSGPs require Sims to control its stormwater discharges so as not to “cause or contribute to a violation of Water Quality Standards.” 2018 MSGP at 14; 2023 MSGP at 13.

103. The MSGPs require that if at any time Sims becomes aware that its discharge does not meet applicable water quality standards or its stormwater discharge will not be controlled as necessary such that the receiving water of the United States will not meet an applicable water quality standard, Sims must take corrective action(s). 2018 MSGP at 15; 2023 MSGP at 14.

104. The MSGPs require that if Sims finds that its control measures are not “achieving the

goals or requirements” of the MSGPs, Sims must modify the SWPPP and conduct “additional monitoring and analysis.” 2018 MSGP at 27-28; 2023 MSGP at 26-27.

Sims’ Monitoring and Reporting Requirements Under the MSGPs

105. The MSGPs require Sims to “make a copy of the SWPPP available to the public within fourteen (14) days of receipt of a written request.” 2018 MSGPs at 26; 2023 MSGP at 25.

The Facility and Its Operations and Discharges

106. Sims collects and/or processes raw scrap metal, including salvaged vehicles, rail cars, household scrap and appliances, industrial machinery, manufacturing scrap, and construction and demolition scrap at the Facility.

107. Sims receives unprocessed scrap metal at the Facility, which it stores in uncovered piles on-site that are exposed to precipitation and snowmelt.

108. Sims’ processing activities include crushing, torching, shearing, shredding, separating, sorting, and/or baling of scrap metal.

109. Most of Sims’ processing activities are conducted outdoors.

110. Sims stores processed metal at the Facility in uncovered bales that are exposed to precipitation and snowmelt.

111. At the Facility, Sims loads scrap metal and plastic waste onto barges.

112. Sims stores petroleum hydrocarbons onsite at the Facility, including bulk fuel storage in aboveground storage tanks that are exposed to precipitation and snowmelt.

113. Sims’ handling and/or storage of oil, grease, petroleum hydrocarbons, and/or fuel have resulted in spills, leaks, and/or slicks at the Facility.

114. Upon information and belief, spills, leaks, and/or slicks of oil, grease, petroleum hydrocarbons, and/or fuel at the Facility have been exposed to precipitation and snowmelt.

115. Processed and unprocessed scrap metal, end-of-life vehicles, machinery, equipment, oil, fuel, and chemical storage tanks, batteries, and vehicles are exposed to precipitation and snowmelt at the Facility.

116. Precipitation and snowmelt at the Facility become contaminated with heavy metals, dust and solids, organic contaminants including fuel and oil, trash, and other pollutants associated with the Facility's operations.

117. The sources of pollutants associated with industrial operations at the Facility include: unprocessed scrap metal including end-of-life vehicles, appliances, machinery, and other scrap; bales of processed scrap metal; machines and equipment left outdoors; and vehicles driving on and off the Facility.

118. Pollutants associated with industrial operations at the Facility include, but are not limited to: heavy metals, suspended solids, debris, solvents, dust, low density waste (floatables), oil, fuel, trash, and other pollutants associated with the Facility's operations.

119. During every measurable precipitation event and instance of snowmelt, water flows onto and over exposed materials and accumulated pollutants at the Facility, generating stormwater runoff.

120. Precipitation above 0.1 inches during a 24-hour period constitutes a measurable precipitation event. 40 C.F.R. § 122.26(c)(1)(i)(E)(6).

121. Stormwater runoff from the Facility is collected, channeled, and conveyed via site grading, slopes, site infrastructure, the operation of gravity, and other conveyances into Newtown Creek.

122. At the Facility, Sims discharges pollutants, including but not limited to aluminum, cadmium, COD, chromium, copper, iron, lead, oil & grease, TSS, and zinc, from Outfall 001 into

Newtown Creek.

123. Sims discharges solids, including plastic waste and pieces of scrap metal, from piles at the Facility, from its barges, and from its loading machinery into Newtown Creek.

DEFENDANTS' VIOLATIONS OF THE CLEAN WATER ACT

Effluent and Water Quality Standards Violations

Pollutant: Aluminum

124. Sims has discharged aluminum every quarter for which monitoring was conducted since the fourth quarter of 2019.

125. On four occasions between the fourth quarter of 2019 and the fourth quarter of 2023, Sims has discharged concentrations of aluminum higher than the MSGPs' benchmark value for recoverable aluminum of 750 mg/L, as detailed in the table below.

126. On four occasions since the fourth quarter of 2019, Sims has triggered the MSGPs' corrective action requirements through aluminum discharges which exceeded the MSGPs' benchmark value, as detailed in the table below.

Par. No.	Pollutant Criteria	Date Corrective Action Triggered	Outfall	Benchmark Value	Measured Value	Type of Allowance	Limit Exceedance Percent
127.	Aluminum	12/31/2019	001	750 ug/L	1,200 ug/L	Daily Max	160%
128.	Aluminum	12/31/2022	001	750 ug/L	10,000 ug/L	Daily Max	1,333%
129.	Aluminum	6/30/2023	001	750 ug/L	970 ug/L	Daily Max	129%
130.	Aluminum	12/31/2023	001	750 ug/L	880 ug/L	Daily Max	117%

Pollutant: Cadmium

131. Sims has discharged cadmium for every quarter for which monitoring was conducted since the fourth quarter of 2019.

132. On three occasions between the fourth quarter of 2019 and the fourth quarter of 2022, Sims has discharged concentrations of cadmium higher than the MSGPs' benchmark value for

cadmium of 1.8 ug/L, as detailed in the table below.

133. On three occasions since the fourth quarter of 2019, Sims has triggered the MSGPs' corrective action requirements through cadmium discharges which exceeded the MSGP's benchmark value, as detailed in the table below.

Par. No.	Pollutant Criteria	Date Corrective Action Triggered	Outfall	Measured Value	Benchmark Value	Type of Allowance	Limit Exceedance Percent
134.	Cadmium	12/31/2019	001	4.1 ug/L	1.8 ug/L	Daily Max	228%
135.	Cadmium	6/30/2021	001	2 ug/L	1.8 ug/L	Daily Max	111%
136.	Cadmium	12/31/2022	001	16 ug/L	1.8 ug/L	Daily Max	889%

Pollutant: Copper

137. Sims has discharged copper every quarter for which monitoring was conducted since the fourth quarter of 2019.

138. On eight occasions since the fourth quarter of 2019, Sims has discharged concentrations of copper higher than the MSGPs' benchmark value for copper of 12 ug/L, as detailed in the table below.

139. On eight occasions since the fourth quarter of 2019, Sims has triggered the MSGPs' corrective action requirements through copper discharges which exceeded the MSGPs' benchmark value, as detailed in the table below.

Par. No.	Pollutant Criteria	Date Corrective Action Triggered	Outfall	Benchmark Value	Measured Value	Type of Allowance	Limit Exceedance Percent
140.	Copper	12/31/2019	001	12 ug/L	4.1 ug/L	Daily Max	417%
141.	Copper	6/30/2021	001	12 ug/L	2 ug/L	Daily Max	342%
142.	Copper	12/31/2021	001	12 ug/L	16 ug/L	Daily Max	408%
143.	Copper	6/30/2022	001	12 ug/L	50 ug/L	Daily Max	600%
144.	Copper	12/31/2022	001	12 ug/L	41 ug/L	Daily Max	5,000%
145.	Copper	6/30/2023	001	12 ug/L	49 ug/L	Daily Max	833%
146.	Copper	12/31/2023	001	12 ug/L	72 ug/L	Daily Max	400%
147.	Copper	6/30/2024	001	12 ug/L	600 ug/L	Daily Max	450%

Pollutant: Iron

148. Sims has discharged iron every quarter for which monitoring was conducted since the fourth quarter of 2019.

149. On eight occasions since the fourth quarter of 2019, Sims has discharged concentrations of iron higher than the MSGPs' benchmark value for iron of 1 mg/L, as detailed in the table below.

150. On eight occasions since the fourth quarter of 2019, Sims has triggered the MSGPs' corrective action requirements through iron discharges which exceeded the MSGPs' benchmark value, as detailed in the table below.

Par. No.	Pollutant Criteria	Date Corrective Action Triggered	Outfall	Benchmark Value	Measured Value	Type of Allowance	Limit Exceedance Percent
151.	Iron	12/31/2019	001	1 mg/L	2.4 mg/L	Daily Max	240%
152.	Iron	6/30/2021	001	1 mg/L	2 mg/L	Daily Max	200%
153.	Iron	12/31/2021	001	1 mg/L	3.1 mg/L	Daily Max	310%
154.	Iron	6/30/2022	001	1 mg/L	2.8 mg/L	Daily Max	280%
155.	Iron	12/31/2022	001	1 mg/L	79 mg/L	Daily Max	7,900%
156.	Iron	6/30/2023	001	1 mg/L	4.6 mg/L	Daily Max	460%
157.	Iron	12/31/2023	001	1 mg/L	4.6 mg/L	Daily Max	460%
158.	Iron	6/30/2024	001	1 mg/L	2.7 mg/L	Daily Max	270%

Pollutant: Lead

159. Sims has discharged lead every quarter for which monitoring was conducted since the fourth quarter of 2019.

160. On five occasions between the fourth quarter of 2019 and the fourth quarter of 2023, Sims has discharged concentrations of lead higher than the MSGPs' benchmark value for lead of 69 mg/L, as detailed in the table below.

161. On five occasions since the fourth quarter of 2019, Sims has triggered the MSGPs' corrective action requirements through lead discharges which exceeded the MSGPs' benchmark value, as detailed in the table below.

Par. No.	Pollutant Criteria	Date Corrective Action Triggered	Outfall	Benchmark Value	Measured Value	Type of Allowance	Limit Exceedance Percent
162.	Lead	12/31/2019	001	69 ug/L	76 ug/L	Daily Max	110%
163.	Lead	6/30/2022	001	69 ug/L	87 ug/L	Daily Max	126%
164.	Lead	12/31/2022	001	69 ug/L	1200 ug/L	Daily Max	1,739%
165.	Lead	6/30/2023	001	69 ug/L	140 ug/L	Daily Max	203%
166.	Lead	12/31/2023	001	69 ug/L	100 ug/L	Daily Max	145%

Pollutant: Zinc

167. Sims has discharged zinc every quarter for which monitoring was conducted since the fourth quarter of 2019.

168. On eight occasions since the fourth quarter of 2019, Sims has discharged concentrations of zinc higher than the MSGPs' benchmark value for zinc of 110 ug/L, as detailed in the table below.

169. On eight occasions since the fourth quarter of 2019, Sims has triggered the MSGPs' corrective action requirements through zinc discharges which exceeded the MSGPs' benchmark value, as detailed in the table below.

Par. No.	Pollutant Criteria	Date Corrective Action Triggered	Outfall	Benchmark Value	Measured Value	Type of Allowance	Limit Exceedance Percent
170.	Zinc	12/31/2019	001	110 ug/L	480 ug/L	Daily Max	436%
171.	Zinc	6/30/2021	001	110 ug/L	400 ug/L	Daily Max	364%
172.	Zinc	12/31/2021	001	110 ug/L	600 ug/L	Daily Max	545%
173.	Zinc	6/30/2022	001	110 ug/L	520 ug/L	Daily Max	473%
174.	Zinc	12/31/2022	001	110 ug/L	7300 ug/L	Daily Max	6636%
175.	Zinc	6/30/2023	001	110 ug/L	630 ug/L	Daily Max	573%
176.	Zinc	12/31/2023	001	110 ug/L	650 ug/L	Daily Max	591%
177.	Zinc	6/30/2024	001	110 ug/L	570 ug/L	Daily Max	518%

Pollutant: Total Suspended Solids

178. Sims has discharged TSS every quarter for which monitoring was conducted since the fourth quarter of 2019.

179. Twice between the fourth quarter of 2019 and the fourth quarter of 2022, Sims has

discharged concentrations of TSS higher than the MSGPs' benchmark value for TSS of 100 mg/L, as detailed in the table below.

180. Twice since the fourth quarter of 2019, Sims has triggered the MSGPs' corrective action requirements through TSS discharges which exceeded the MSGPs' benchmark value, as detailed in the table below.

Par. No.	Pollutant Criteria	Date Corrective Action Triggered	Outfall	Benchmark Value	Measured Value	Type of Allowance	Limit Exceedance Percent
181.	TSS	12/31/2019	001	100 mg/L	130 mg/L	Daily Max	130%
182.	TSS	12/31/2022	001	100 mg/L	1,000 mg/L	Daily Max	1,000%

Pollutant: Trash

183. Sims discharges and will continue to discharge pieces of scrap metal and recycled plastic trash from the Facility, from barges, and from loading equipment directly into Newtown Creek.

184. Eyewitness testimony, photographs, and video footage establish Sims' repeated direct discharges of scrap metal and recycled plastic into Newtown Creek.

Monitoring and Reporting Violation

185. CLF sent a written request to counsel for Sims on November 22, 2024 requesting a copy of the Sims' SWPPP for the Facility.

186. Sims' counsel acknowledged receipt of CLF's written request on November 22, 2024.

187. As of December 10, 2024 (18 days after the written request was sent), CLF has not received the SWPPP for the Facility.

Unauthorized Non-Stormwater Discharge of Solids

188. While loading barges with scrap metal and plastic recycling, Sims drops pieces of scrap metal, plastic waste, and/or trash into Newtown Creek.

189. Pieces of scrap metal, plastic waste, and/or trash are not properly secured at the Facility

and/or on the barges during and following loading.

190. Pieces of scrap metal, plastic waste, and/or trash are blown into Newtown Creek from the Facility and/or the barges.

191. The following photograph taken of the Facility and Newtown Creek on November 12, 2024 shows plastic waste floating downstream after having been discharged by Sims into Newtown Creek during barge loading operations.



THE FACILITY'S HARMS TO CLF'S MEMBERS

192. Sims' discharges of pollutants from the Facility into Newtown Creek have degraded the health of the creek and contributed to its impairment in a way that diminishes the use and enjoyment of the waterbody by CLF's members.

193. Aluminum is toxic to fish and many aquatic animals. Aluminum bioaccumulates in certain types of plants and in some fish and invertebrate species. Skin exposure to aluminum may

cause rashes. When ingested, aluminum may cause health problems in humans such as bone disease, brain disease, and Alzheimer's disease.

194. Cadmium is toxic to humans and damages the kidneys, liver, bones, and heart. Cadmium readily accumulates in organisms such as mollusks and crustaceans. Sources of cadmium pollution include the recycling of metals, batteries, and electronic waste.

195. Copper is toxic to aquatic animals and bioconcentrates in mollusks. Consuming too much copper may cause liver and kidney damage, increased risk of heart disease, nausea, vomiting, abdominal pain and diarrhea, and even death. Stormwater runoff is a major source of elevated copper levels in river water.

196. Iron solids in the water smother invertebrates, microbes, and eggs; impair the respiration of aquatic animals; and decrease reproduction rates. Iron harms humans both as a substance that is toxic in high amounts and as a nuisance. Iron in drinking water impairs taste, clogs pipes, and causes stains.

197. Chemical oxygen demand (COD) is an indicator for the presence of organic pollution. Organic pollution contributes to low dissolved oxygen levels and eutrophication, which can result in harmful algal and cyanobacteria blooms, a proliferation of nuisance and invasive species, discolored water, harmful benthic deposits, and scum.

198. Lead is toxic to humans and animals (including all aquatic organisms), even in very small amounts. Low levels of lead can impair the brain, kidney, heart, blood, lungs, bones, immune system, and reproductive systems. Lead exposure can cause development issues, including decreased cognitive function and decreased birthweight and size. Lead is linked to increased risk of heart disease and cancer.

199. Zinc is toxic to humans and aquatic organisms in high amounts, and it reacts with

chemicals like cadmium to intensify their toxicity. Zinc bioaccumulates in aquatic animals.

When ingested, zinc may cause health problems in humans, including brain damage, infertility and developmental issues, pancreatic damage, anemia, nausea, vomiting, and stomach cramps.

200. Elevated levels of total suspended solids (TSS) increase water turbidity and reduce the light available to desirable aquatic plants. TSS that settle out as bottom deposits can alter or destroy habitat for fish and other bottom-dwelling organisms.

201. Trash harms aquatic environments by altering the aquatic habitat. Fish and other wildlife eat trash by mistake, harming their digestive systems and causing starvation. Trash can entangle animals, causing injury, reduced mobility, and death. Trash releases harmful contaminants into the water as it decomposes.

202. CLF's members worry about the potential health effects of being exposed to heavy metals and other pollutants in Newtown Creek while boating.

203. CLF's members worry about the negative impact of heavy metals and other pollutants on their ability to enjoy observing wildlife in Newtown Creek.

204. The presence of trash, odor, unnatural color, scum, foam, and diminished water clarity adversely affect the aesthetic enjoyment of Newtown Creek by CLF's members while boating and walking nearby.

CLAIMS FOR RELIEF

205. Plaintiff incorporate the allegations in the above paragraphs into each count below as though fully set forth herein.

206. In light of Defendants' history of violations, and absent court-ordered relief, Defendants will continue to violate the following provisions of the MSGPs and the Clean Water Act in the future unless and until enjoined from doing so.

207. Defendants' violations of federal and state law have harmed, are harming, and will

continue to harm the Plaintiff.

208. Upon information and belief, additional information from Defendants and other sources not yet publicly available will reveal additional violations and information about the violations described.

209. Each day the Defendants have violated or continue to violate the following provisions is a separate and distinct violation of the MSGPs and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

Count I: Failure to Take Corrective Actions Following Triggering Events

210. The sampling results exceeded the applicable benchmark values 38 times at the Facility.

211. Defendants were required to take corrective actions at least 38 times at the Facility.

212. Defendants did not take corrective action as required by the MSGPs, including following the triggering events listed in Paragraphs 210-11 above.

213. Upon information and belief, following the triggering events, including those listed in Paragraphs 210-11 above, Defendants did not conduct a facility inspection, implement Best Management Practices to address any identified sources of contamination within set timeframes, and/or revise the Stormwater Pollution Prevention Plans for the Facility.

214. Upon information and belief, following the triggering events listed in Paragraphs 210-11 above, Defendants did not submit a proposed schedule to NYSDEC for BMP implementation estimated to take longer than 12 weeks and/or receive written approval from NYSDEC for such a timeframe.

Count II: Failure to Use Control Measures to Minimize Pollutant Discharges

215. Sims has failed and continues to fail to reduce and/or eliminate the discharge of

pollutants to the extent achievable using control measures as required by the MSGPs.

216. Upon information and belief, Sims has failed to comply with the pollutant control measures required in Part II of the MSGPs, including but not limited to provisions related to minimizing exposure, good housekeeping measures, maintenance of control measures, leaks and spills, control of sediment discharge, and dust generation.

217. Sims has discharged pollutants in excess of the benchmark values in the MSGPs at least 38 times at the Facility.

218. Upon information and belief, Sims has failed to meet the MSGPs' requirements for developing and maintaining the Facility's Stormwater Pollution Prevention Plan ("SWPPP").

219. Upon information and belief, Sims has failed to implement SWPPP requirements for discharges to impaired waterbodies where the cause of the impairment is a pollutant of concern included in Sims' benchmarks as described in Paragraph 76.

Count III: Unlawful Discharges Causing Violation of Water Quality Standards

220. Sims has discharged, and continues to discharge, pollutants (including but not limited to discharges of aluminum, cadmium, chromium, copper, iron, lead, zinc, organic materials measured as COD, TSS, oil and grease, plastic trash, pieces of scrap metal, trash, and/or other odiferous and discolored pollutants) that have contributed to, and will continue to contribute to, degradation of Newtown Creek, including the violation of state water quality standards.

221. Upon information and belief, Defendants' discharge of pollutants from the Facility has resulted in aesthetically objectionable color and/or turbidity in the receiving waters downstream from the Facility.

222. Upon information and belief, Defendants' discharge of pollutants from the Facility has resulted in taste and/or odor in the receiving waters downstream from the Facility that would

impair the waters for their best usages of fishing.

223. Defendants' discharge of pollutants from the Facility has resulted in solids, floating substances, garbage, and/or other refuse pollutants in the receiving waters downstream from the Facility that impair designated uses.

224. Sims' discharge of pollutants from the Facility has contributed to the impairment of State Waterbody ID NY1702-0002, Newtown Creek, for all its designated uses, including impairment to fishing and secondary contact recreation from debris, floatables, trash, dissolved oxygen, and fecal coliform.

225. Every state surface water quality standard violation constitutes a separate and distinct violation of the MSGPs and the Clean Water Act.

Count IV: Failure to Comply with Monitoring and Reporting Requirements

226. Defendants have failed to comply with required SWPPP disclosure deadlines by not submitting the Facility's SWPPP to CLF in 14 days.

Count V: Unauthorized Non-Stormwater Discharge of Solids

227. Sims discharges solids, including plastic waste and pieces of scrap metal, from piles at the Facility, from its barges, and from its loading machinery into Newtown Creek.

228. Defendants' discharge of solids are "point source" discharges into waters of the United States.

229. Defendants' non-stormwater discharges of solids to Newtown Creek is not authorized either by the MSGP or an individual NPDES permit.

230. Each and every day on which Defendants have discharged and continue to discharge solids from the Facility without authorization constitutes a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and Section 402 of the CWA, 33 U.S.C.

§ 1342.

RELIEF REQUESTED

Plaintiff respectfully requests that this Court grant the following relief:

- a. Issue a declaratory judgment, pursuant to 28 U.S.C. § 2201, that Defendants have violated and remain in violation of the Permit, Section 301(a) of the Clean Water Act, 33 U.S.C § 1311(a), and applicable regulations, as alleged in Counts I, II, III, and IV of this Complaint;
- b. Enjoin Defendants from violating the requirements of the MSGPs, Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), applicable Clean Water Act regulations, and state water quality standards;
- c. Impose civil penalties on Defendants as provided under Sections 505(a) and 309(d) of the Clean Water Act, 33 U.S.C. §§ 1365(a) and 1319(d), and its implementing regulations of 33 C.F.R. § 326.5;
- d. Award Plaintiff's costs of litigation, including reasonable attorney and expert witness fees, as provided under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(d); and
- e. Grant such other relief as this Court may deem appropriate.

Dated: December 10, 2024

/s/ Chelsea Kendall
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2024, the foregoing document was filed through the ECF system, by which means a copy of the filing will be sent electronically to all parties registered with the ECF system.

/s/ Erica Kyzmir-McKeon
Erica Kyzmir-McKeon